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FEB 7 - 1997

February 7, 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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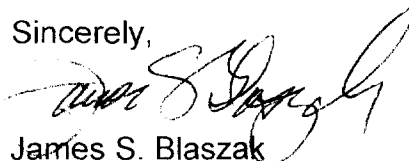
RE: In the Matter of Policy and Rules Concerning the Interstate,
Interexchange Marketplace; Implementation of Section 254(g) of
the Communications Act of 1934, as amended, CC Dkt. No. 96-61

Dear Mr. Caton:

Pursuant to Section 1.429 of the Commission's Rules, attached please find an original and 11 copies of the Reply to Oppositions of the Ad Hoc Telecommunications Users Committee, the California Bankers Clearing House Association, ABB Business Services, Inc., and The Prudential Insurance Company of America, in the above captioned matter. Please date stamp the additional copy and return it with our messenger.

If you have any questions regarding this filing, please do not hesitate to call.

Sincerely,



James S. Blaszak

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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OFFICE OF SECRETARY

In the Matter of)

Policy and Rules Concerning the)
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Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

CC Docket No. 96-61

REPLY TO OPPOSITIONS

The Ad Hoc Telecommunications Users Committee, the California Bankers Clearing House Association, the New York Clearing House Association, ABB Business Services, Inc. and The Prudential Insurance Company of America offer this Reply to two points made in oppositions to the Petition for Clarification and Partial Reconsideration filed by these parties concerning the Commission's Second Report and Order in the above-captioned proceeding.¹

1. The Local Access Issue

Bell Atlantic opposes the request for clarification sought by the undersigned parties with respect to the inclusion of local access services provided only as part of interexchange offerings in detariffed offerings negotiated with individual customers. The heart of Bell Atlantic's argument is that local

¹ *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket 96-61, Second Report and Order, FCC 96-424 (released October 31, 1996), 61 Fed. Reg. 59340 (November 23, 1996) (hereinafter the "Order").

access was not covered by the Order's mandatory detariffing requirement because it is not an "interexchange" service. Because it was not covered by the detariffing requirement in the first instance, the argument goes, the Commission does not have to expressly exclude it from coverage. Opposition of Bell Atlantic at 2.

Bell Atlantic's definitional approach to the issue ignores the significant legal and practical considerations raised by the Petition:

- The argument that local access is excluded from the scope of the proceeding and the resulting detariffing requirement ignores the fact that prior orders concerning "interexchange" services were addressed to end-to-end offerings, *i.e.*, not just the "long distance" portions.
- Interexchange carriers have plainly read those prior Commission orders to apply in this manner by, for example, providing end-to-end offerings under contract tariffs.
- Any requirement that end-to-end services be unbundled and offered under separate legal instruments would "create a practical nightmare."²

Bell Atlantic also argues that "it would not make 'sense'" for the Commission to adopt different regulatory regimes for dominant and nondominant carriers. Comments of Bell Atlantic at pp. 2-3. In other words, if the Commission detariffs local access for nondominant carriers, it must also detariff local access for dominant carriers.

² Opposition of AT&T at 8 n.12; *see also* Comments of Sprint Corporation at 8 (stating that it has been informed by the Commission's staff that detariffing of local access is not permitted, but noting that "there is no legitimate reason" for such a requirement).

Bell Atlantic, in effect, seems to attempt to argue from *dicta* in *MCI Telecommunications Corp. v. AT&T*, 114 S. Ct. 2223 (1994) and *Southwestern Bell Corp. v. FCC*, 43 F.3d 1515 (D.C. Cir. 1995), that Congress could not have meant to give the Commission authority to forebear from applying regulation to some carriers, but not to other carriers, operating in the same market. The *MCI* and *Southwestern* decisions, *supra*, dealt with the Commission's authority to require or permit detariffing of nondominant carrier offerings. Those decisions did not seek to establish the public policy basis for regulatory forbearance. Indeed, the courts went to great pains to indicate that such decisions are for Congress to make in the first instance. In section 401 of the Telecommunications Act of 1996 Congress made exactly that decision. Section 401 expressly states that the Commission "shall forebear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications service," if certain conditions exist. The Commission, with adequate support in the record, exercised that authority in the Order.

Finally, we note that the clarification we seek concerns local access only when it is part of a bundled customer-specific inter-exchange offering. Even if Bell Atlantic were correct that regulatory distinctions could not be made among classes of carriers based on market power, (which is not the case in light of the Telecommunications Act of 1996), our Petition does not request the Commission to detariff local access services provided on a stand-alone basis by Bell Atlantic or any other local exchange carriers.

2. The Disclosure Issue

The States of Hawaii and Alaska have opposed our request that the Commission narrow any public rate disclosure requirement imposed by the Order. Indeed, they argue for broad disclosure, including required posting of carrier pricing on the Internet. Opposition and Reply of the State of Hawaii at 6; Opposition of the State of Alaska at 3-5.

It is useful to examine what the Petition did (and did not) request in this regard. We have sought clarification of the Order's disclosure requirement as it applies to customer-specific service arrangements, a subject on which there appears to be considerable uncertainty among carriers and their customers. We noted that the rule adopted by the Commission does not require disclosure of all contract terms, nor does it appear to require the same amount of information as the Commission's tariff requirements. Petition at 7-10. We expressed concern about the vagueness of the rule in light of the Commission's stated concern that rate disclosure may facilitate unlawful price coordination among carriers. *Id.* at 10. We urged the Commission to limit any disclosure requirement to the extent necessary to protect the public interest.

The order cites three reasons for the disclosure requirement, one of which is to enable the public "to determine whether a carrier is adhering to the geographic rate averaging and rate integration requirements of Section 254(g)." Order ¶ 84, see *also* ¶ 25. We stated that, as the Commission has forbore from applying Section 254(g) with respect to "contract tariffs [and] Tariff 12 offerings"

several months ago, a rate disclosure requirement could not be justified on grounds relating to enforcement of Section 254(g). Petition at 9.

The State of Hawaii disagrees with this last point, stating that Section 254(g) imposes broad requirements and applies to all service offerings without exception,³ that the legislative history supports a broad reading of the provision,⁴ and that the Commission's order of several months ago did not forbear from applying the geographic rate averaging requirement to contract tariffs and similar offerings.⁵ But the Section 254(g) Order could not be more clear on this point:

[W]e forbear from applying Section 254(g), consistent with the intent of Congress, to the extent necessary to permit carriers to depart from geographic rate averaging to offer contract tariffs, Tariff 12 offerings, optional calling plans, temporary promotions, and private line services in accordance with our policy as previously applied to AT&T.

11 FCC Rcd at 9577. The State of Alaska agrees that the Section 254(g) Order did forbear from applying the Commission's geographic rate averaging requirement to such service offerings. Opposition of the State of Alaska at 2-3.

The Section 254(g) Order did not address the issue of forbearance with respect to the Commission's rate integration policy. It explained, however, that the policy requires carriers to integrate their rates to and from off-shore

³ Opposition and Reply of the State of Hawaii at 2

⁴ *Id.* at 3.

⁵ *Id.* at 8. See *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, 11 FCC Rcd 9564 (1996) (the "Section 254(g) Order").

points with their rates for the contiguous 48 states either through the use of postalized (*i.e.*, non-distance sensitive) rates or reasonable mileage bands. Section 254(g) Order at 9588-89.

The point that we made in our Petition -- and wish to supplement here -- is that the Commission should re-examine whether its concerns about ensuring rate integration can be adequately met by some combination of the following:

- the workings of the competitive market, which the Commission has found to be an adequate deterrent to other forms of unlawful discrimination under the Act;⁶
- the Commission's complaint processes;
- a requirement that customer-specific rates be made available by the carriers to complainants in formal proceedings, Commission staff involved in official agency functions; Members of Congress and their staffs in connection with agency oversight; and/or state officials (*e.g.*, public service commissions, attorneys general) acting in their official capacities;

or, if some public disclosure is necessary:

- disclosure of any contract rates that are distance sensitive;
- disclosure of any mileage bands in a contract, but not the actual rates;⁷
- disclosure of the ratio of a contract's pricing in the highest mileage band to its pricing in lower mileage bands.

⁶ See Order at para.21.

⁷ See, *e.g.*, Section 254(g) Order at para.68, (requiring carriers to submit rate band information for service to Guam and the Northern Marianas as the first step in phasing the rate integration requirement for those locations).

It is not our intention to deprive customers or the States or the Commission of the ability to enforce rights under the Act or the Commission's orders. The purpose of our Petition was -- and is -- to urge the Commission to ensure that the requirements adopted are carefully tailored to the interests they are designed to serve and that they do not undermine any of the stated goals of the Order.

CONCLUSION

For the reasons stated, the Commission should clarify or partially reconsider its Order with respect to the issues raised in our Petition.

Respectfully submitted,



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Services, Inc. and The Prudential Insurance
Company of America

Dated: February 7, 1997

Certificate of Service

I, Noel Manalo, hereby certify that true and correct copies of the preceding Reply to Oppositions of the Ad Hoc Telecommunications Users Committee, the California Bankers Clearing House Association, the New York Clearing House Association, ABB Business Services, Inc., and The Prudential Insurance Company of America in the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, were served this 7th day of February, 1997 via first class mail upon the parties named in the attached list.



Noel Manalo

February 7, 1997

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